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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(El Dorado)

THE PEOPLE,

Plaintiff and Respondent,

v.

MERLIN CODY GRIFFITHS,

Defendant and Appellant.

C086211

(Super. Ct. No. S15CRF0141)

A jury found defendant Merlin Cody Griffiths guilty of assault with a deadly weapon, residential burglary with an occupant present, felony resisting an executive officer, and misdemeanor resisting a peace officer. On appeal, defendant argues insufficient evidence supported the jury's verdicts regarding assault and burglary, and that a new trial is required due to jury misconduct. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The Offense

M. M., who lived in the apartment next door to defendant, knocked on defendant's door and asked defendant to turn down the volume of his music. Defendant refused and shoved M. M. M. M. told defendant he was going to call the police, and he did.

Approximately 10 to 15 minutes later, defendant knocked on M. M.'s door, and M. M. opened the door. Defendant asked M. M. whether he was "a Jew," "an immigrant," or "a citizen." M. M. asked defendant to leave, and then M. M. attempted to close the door. As M. M. did so, defendant pushed the door back open. M. M. stumbled backward approximately two feet. As M. M. attempted to regain his balance, M. M. was struck on the head with a lamp. The lamp, which weighed five pounds and consisted of a narrow, five-foot-long metal shaft with an upward facing plastic cone at the top, typically stood about six inches inside the front door of M. M.'s apartment. The rim of the plastic cone struck M. M.'s left cheek, leaving a one-inch-long cut. The impact broke the cone off the metal shaft and almost caused M. M. to fall over. M. M. heard the lamp strike the floor a few seconds after it hit him. Defendant then made an obscene hand gesture, insulted M. M., and left. M. M. did not see defendant enter the apartment or touch the lamp.

Police officers arrived approximately 30 minutes after the incident. After speaking with M. M. for approximately five minutes, the officers knocked on defendant's door. Defendant ignored commands from the officers, yelled at them, and refused to open his door for about 30 minutes. Once defendant finally opened the door to his apartment, a police dog working with Sergeant Jason Cheney entered. Sergeant Cheney then pulled defendant outside and forced him facedown onto the ground.

Defendant ignored Sergeant Cheney's commands to put his hands behind his back and struggled against Sergeant Cheney's attempts to handcuff him. After he eventually

was handcuffed, defendant wrapped his legs around Sergeant Cheney's right leg and resisted other officers' efforts to put him in a patrol car.

Trial and Jury Deliberations

Before trial, the superior court excluded evidence of defendant's status as a probationer. But during his testimony, M. M. stated defendant's probation officer came to the scene. Defense counsel objected, and outside the presence of the jury, the trial court reminded the prosecution to instruct witnesses not to mention defendant's probationary status. The trial court then denied the defense's motion for a mistrial.

On the third day of trial, a juror realized she had prior contact with Sergeant Cheney that left her with a distinctly negative feeling about him. The juror also revealed she was a certified dog trainer. Although defense counsel argued against removing the juror, the trial court removed her for cause, and an alternate juror was seated.

The jury found defendant guilty of felony resisting an executive officer, assault with a deadly weapon, misdemeanor resisting a peace officer, and residential burglary with an occupant present. (Pen. Code, §§ 69, 245, subd. (a)(1), 148, subd. (a)(1), 459, 667.5, subd. (c)(21).)¹

Following the verdict, but before sentencing, the superior court authorized defense counsel to contact jurors to determine whether the jury committed misconduct by considering during deliberation defendant's status as a probationer. Defense counsel concluded there was no basis on which to file a new trial motion, and defendant never filed such a motion.

Defendant was sentenced to six years eight months in prison. The trial court designated the six-year upper term for burglary as the principal term, and it sentenced defendant to an eight-month consecutive term for resisting an executive officer. The

¹ Further undesignated statutory references are to the Penal Code.

sentences for resisting a peace officer and assault with a deadly weapon were stayed pursuant to section 654.

DISCUSSION

I

Sufficiency of the Evidence

Defendant contends there was insufficient evidence to find him guilty of assault with a deadly weapon or first degree burglary because neither M. M. nor any other witness observed defendant enter M. M.'s apartment or handle the lamp. We disagree.

When a defendant challenges the sufficiency of the evidence to support a jury finding, “we review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” (*People v. Stanley* (1995) 10 Cal.4th 764, 792.) “Although we must ensure the evidence is reasonable, credible, and of solid value, nonetheless it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends. [Citation.]” (*People v. Jones* (1990) 51 Cal.3d 294, 314.) “[T]he standard of review that applies to insufficient evidence claims involving circumstantial evidence is the same as the standard of review that applies to claims involving direct evidence.” (*People v. Manibusan* (2013) 58 Cal.4th 40, 87.) In our substantial evidence review, we must accept logical inferences the jury might have drawn from the circumstantial evidence. (*Ibid.*)

We conclude there is substantial evidence supporting the jury’s finding that defendant committed assault with a deadly weapon, which is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another with a deadly weapon or instrument. (§§ 240, 245, subd. (a)(1).) M. M. testified defendant shoved the door back towards him as he attempted to close it, causing him to stumble

backward. Although M. M. did not see defendant hit him with the lamp, the lamp was near the door and was well within defendant's reach. The lamp hit M. M. with such force that it cut his cheek, nearly caused him to fall, and damaged the lamp. M. M. heard the lamp hit the ground a few seconds after it struck him. And throughout the events at issue, defendant's conduct was argumentative, combative, and violent. Based on the evidence in the record, a reasonable trier of fact could logically infer that defendant picked up the lamp and struck M. M. with it.

Substantial evidence likewise supports the jury's verdict regarding first degree burglary, which requires that defendant enter an inhabited apartment with intent to commit a felony. (§§ 459, 460.) As there is substantial evidence defendant assaulted M. M. with a deadly weapon while M. M. stood in his apartment, there is also substantial evidence defendant entered M. M.'s apartment with the intent to assault M. M.

II

Jury Misconduct

Defendant contends we must remand for a new trial based on jury misconduct because the jury considered defendant's status as a probationer during its deliberations. But "failure to raise the issue of juror misconduct and seek relief from the court on that basis results in a forfeiture of the issue on appeal." (*People v. Dykes* (2009) 46 Cal.4th 731, 808, fn. 22.) Defendant concedes he did not file a new trial motion based on juror misconduct and therefore the issue is forfeited on appeal.²

² Defendant also asserts the juror who had previous conversations with Sergeant Cheney committed misconduct, but defendant does not argue this alleged misconduct requires remand for a new trial. In any event, defendant forfeited the issue by not raising it in the trial court. (See *People v. Dykes, supra*, 46 Cal.4th at p. 808, fn. 22.)

DISPOSITION

The judgment is affirmed.

_____**KRAUSE**_____, J.

We concur:

_____**ROBIE**_____, Acting P. J.

_____**MURRAY**_____, J.